

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ERBY GONZALES,)	CASE NO. 3:08 CV 766
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
v.)	
)	<u>MEMORANDUM OF OPINION</u>
CLIFFORD SMITH,)	<u>AND ORDER</u>
)	
Respondent.)	

On March 26, 2008, petitioner *pro se* Erby Gonzales filed the above-captioned habeas corpus action under 28 U.S.C. § 2254. Gonzales is incarcerated in an Ohio penal institution, having pleaded no contest to three counts of trafficking in cocaine. As grounds for his petition, he asserts a proper journal entry of his convictions was not made under Ohio law, and thus the Ohio Department of Rehabilitation and Correction (ODRC) did not have authority to take custody and control of him. In particular, Gonzales asserts that Ohio statutes and rules require a specific "'present' finding guilt" before he could incarcerated for his crimes. For the reasons stated below, the petition is denied and this action is dismissed.

A federal district court may entertain a petition for a

writ of habeas corpus by a person in state custody only on the ground that the custody violates the Constitution or laws of the United States. Furthermore, the petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254.

The issue of whether or not the ODRC lawfully obtained custody and control of petitioner under Ohio law is an issue of state law. It is not the province of this court to reexamine state-court determinations on state-law questions. *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991). Further, there is no basis set forth in the petition which arguably suggests that the state law issue raised by Gonzales implicates his federal constitutional rights.

Accordingly, the petition is denied and this action is dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
UNITED STATES DISTRICT JUDGE

Dated: 5/15/08